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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 JOHN TURNER,
9

10 *Plaintiff,*

11 vs.

12 H.D.S.P. LAW LIBRARY,
13

14 *Defendant.*

2:13-cv-01623-JCM-VCF

ORDER

15 This *pro se* prisoner civil rights action by Nevada state inmate comes before the court
16 for initial review of the complaint under 28 U.S.C. § 1915A as well as upon multiple motions
17 (## 9-11) filed by plaintiff. The court defers action on the pauper application at present.

18 ***Screening***

19 When a “prisoner seeks redress from a governmental entity or officer or employee of
20 a governmental entity,” the court must “identify cognizable claims or dismiss the complaint,
21 or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a
22 claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who
23 is immune from such relief.” 28 U.S.C. § 1915A(b).

24 In considering whether the plaintiff has stated a claim upon which relief can be granted,
25 all material factual allegations in the complaint are accepted as true for purposes of initial
26 review and are to be construed in the light most favorable to the plaintiff. *See, e.g., Russell*
27 *v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions
28 unsupported by any actual allegations of fact are not assumed to be true in reviewing the

1 complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-81 (2009). That is, bare and conclusory
 2 assertions that constitute merely formulaic recitations of the elements of a cause of action and
 3 that are devoid of further factual enhancement are not accepted as true and do not state a
 4 claim for relief. *Id.*

5 Further, the factual allegations must state a plausible claim for relief, meaning that the
 6 well-pleaded facts must permit the court to infer more than the mere possibility of misconduct:

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 8 [A] complaint must contain sufficient factual matter,
 9 accepted as true, to “state a claim to relief that is plausible on its
 10 face.” [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127
 11 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).] A claim has facial
 12 plausibility when the plaintiff pleads factual content that allows the
 13 court to draw the reasonable inference that the defendant is liable
 14 for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The
 15 plausibility standard is not akin to a “probability requirement,” but
 16 it asks for more than a sheer possibility that a defendant has
 17 acted unlawfully. *Ibid.* Where a complaint pleads facts that are
 18 “merely consistent with” a defendant’s liability, it “stops short of
 19 the line between possibility and plausibility of ‘entitlement to
 20 relief.’” *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).

21 . . . [W]here the well-pleaded facts do not permit the court
 22 to infer more than the mere possibility of misconduct, the
 23 complaint has alleged - but it has not “show[n]” - “that the pleader
 24 is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

25 *Iqbal*, 556 U.S. at 679.

26 Allegations of a *pro se* complainant are held to less stringent standards than formal
 27 pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520(1972).

28 Plaintiff John Turner alleges that he has been denied due process of law in violation
 of the fourteenth amendment because he has been denied legal supplies, including manila
 envelopes, pens and paper.

At the very outset, plaintiff has failed to name a viable defendant in the complaint.

Plaintiff may not proceed against the state and the state department of corrections in
 federal court. First, plaintiff may not proceed against the state or an arm of the state due to
 the state sovereign immunity recognized under the eleventh amendment. *See, e.g., Taylor*
v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). State sovereign immunity bars suit in federal
 court against a state or an arm of a state regardless of the relief sought, and plaintiff in any

1 event seeks monetary damages. *See, e.g., Pennhurst State School & Hospital v. Halderman*,
 2 465 U.S. 89, 100-01 (1984). Second, a state or an arm of a state is not a “person” subject
 3 to suit under 42 U.S.C. § 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71
 4 & n.10 (1989).

5 Plaintiff otherwise may not proceed against High Desert State Prison, the “H.D.S.P. –
 6 Law Library,” and/or the “H.D.S.P. – Canteen.” The prison is just a set of buildings. Neither
 7 the prison, the law library, nor the canteen is a juridical person or entity subject to suing or
 8 being sued.

9 Plaintiff thus has failed to name any viable defendant subject to suit.

10 The complaint otherwise in any event fails to state a claim upon which relief can be
 11 granted.

12 There is no due process right to legal supplies under the fourteenth amendment. To
 13 the extent that plaintiff alleges that he has been denied supplies allegedly in violation of
 14 corrections department administrative regulations, he fails to state a claim for relief. The
 15 violation of state administrative regulations does not in and of itself establish that a plaintiff
 16 has been denied a protected liberty interest. *Sandin v. Conner*, 515 U.S. 472, 476-86 (1995).

17 In order to establish a claim for relief instead under the first amendment for an alleged
 18 denial of a right of access to the courts, plaintiff must establish: (a) “‘actual injury’ – that is,
 19 ‘actual prejudice with respect to contemplated or existing litigation, such as the inability to
 20 meet a filing deadline or present a claim,” that affects (b) pursuit of litigation “to attack [his]
 21 sentence[], directly or collaterally, and in order to challenge the conditions of [his]
 22 confinement.” *Lewis v. Casey*, 518 U.S. 353, 348 & 355 (1996). As the supreme court
 23 observed in *Casey*:

24 . . . *Bounds [v. Smith*, 430 U.S. 817 (1977),] does not
 25 guarantee inmates the wherewithal to transform themselves into
 26 litigating engines capable of filing everything from shareholder
 27 derivative actions to slip-and-fall claims. The tools it requires to
 28 be provided are those that the inmates need in order to attack
 their sentences, directly or collaterally, and in order to challenge
 the conditions of their confinement. Impairment of any other
 litigating capacity is simply one of the incidental (and perfectly
 constitutional) consequences of conviction and incarceration.

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2 . . . *Bounds* . . . guarantees no particular methodology but
 3 rather the conferral of a capability — the capability of bringing
 4 contemplated challenges to sentences or conditions of
 5 confinement before the courts. When any inmate . . . shows that
 6 an actionable claim of this nature which he desired to bring has
 been lost or rejected, or that the presentation of such a claim is
 currently being prevented, because this capability of filing suit has
 not been provided, he demonstrates that the State has [denied
 the right of access to the courts].

7 518 U.S. at 355 & 356.

8 In the present complaint, plaintiff alleges in count I only that: (a) “I first *received* legal
 9 supplies . . . for the purpose of [a] small claims suit against L.V.M.P.D. and C.C.D.C;” (b) that
 10 he since has been denied supplies “hendering [sic] correspondence to thee court’s or my
 11 appellee [sic] lawyer;” and (c) that he has “two other small claims suit & a civil, lout [sic] can’t
 12 get them filed.” #1-1, at 4 (emphasis added). These nonspecific allegations do not permit
 13 the court to infer more than the mere possibility of misconduct. That is, nothing in these
 14 conclusory allegations would tend to establish that plaintiff has sustained actual injury to
 15 litigation activity protected by the First Amendment. Merely because plaintiff allegedly has
 16 been hindered in small claims or other civil actions, even against possibly prior custodians,
 17 does not tend to establish that he has been hindered in litigation challenging the conditions
 18 of his confinement. Nor does a conclusory allegation that plaintiff has been “hendered” in
 19 corresponding with his direct appeal counsel establish actual injury to pursuit of his direct
 20 appeal due to an inability to communicate with counsel through any means.¹

21 Count II – which does not include even a single complete sentence – further also quite
 22 obviously does not state a claim for relief, in any respect.

23 The complaint therefore will be dismissed without prejudice for failure to state a claim
 24 upon which relief may be granted, with an opportunity for plaintiff to amend within thirty days
 25 of this order to correct the deficiencies identified herein, if possible.

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 28 ¹The online docket of the state supreme court reflects that plaintiff’s direct appeal in No. 62461 in that
 court has been briefed and is pending for decision.

Pending Motions

Plaintiff's motion (#9) to strike will be denied.

To the extent that the motion presents a coherent request for relief, plaintiff apparently is seeking to have this court strike a filing in a state court small claims proceeding. Plaintiff will have to seek any relief regarding proceedings in the state courts in the state courts. A federal district court does not have appellate jurisdiction over a state court, whether by direct appeal, mandamus, and/or an exercise of supervisory jurisdiction. See, e.g. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). In seeking to have this federal district court enter an order striking filings in a state small claims proceeding, plaintiff unquestionably has sought to invoke appellate jurisdiction by the federal district court over the state court. The court does not have such jurisdiction

Moreover, plaintiff may pursue only the relief requested on the claims presented in the complaint, as amended. That is, this action is not a continuing clearinghouse for all of plaintiff's running controversies of one sort or another with state authorities without regard to what claims actually are alleged in the complaint. He can pursue claims and associated relief based only on the claims presented in the pleadings, as amended.

The motion (#10) for settlement of judgment will be denied. To the extent that the motion presents a coherent request for relief, plaintiff apparently is seeking judgment in his favor because his dispute with correctional authorities has not yet been resolved. Plaintiff first must present a viable claim for relief, which he has not done. Nor can plaintiff obtain relief prior to, *inter alia*, screening of a complaint and an order by the court directing service.

The motion (#11) for summary judgment also will be denied. A motion for summary judgment is premature before, *inter alia*, the pleadings are screened, the defendants are served, and a scheduling order is issued. Plaintiff, again, has not presented viable claims for relief at this point. The conclusory one-page motion with an attached stack of exhibits in any event fails to present a viable motion for summary judgment.

Plaintiff further should note the following. First, plaintiff may not file freestanding exhibits and factual statements in the record. He instead must set forth all of his operative

1 factual allegations within the four corners of the complaint itself, without incorporation of other
2 documents. The court is not required to – nor will it – sift through multiple stacks of exhibits
3 and other filings trying to piece together plaintiff’s possible claims. Plaintiff must include all
4 allegations in his pleadings *and* he must *not* file freestanding exhibits and factual statements
5 in the record. Second, plaintiff can add claims to the complaint only by filing a properly
6 presented amended complaint that is complete in itself and includes all of plaintiff’s claims.
7 The court again is not required to – nor will it – sift through other filings trying to piece together
8 other possible claims. If claims or allegations are not included in the most recent pleading
9 filed, they are not before the court.

10 IT THEREFORE IS ORDERED that the complaint is DISMISSED without prejudice for
11 failure to state a claim upon which relief may be granted, subject to leave to amend within
12 thirty (30) days of entry of this order to correct the deficiencies in the complaint if possible.

13 IT FURTHER IS ORDERED that, on any such amended complaint filed, plaintiff shall
14 clearly title the amended complaint as an amended complaint by placing the word
15 “AMENDED” immediately above “Civil Rights Complaint” on page 1 in the caption and shall
16 place the docket number, **2:13-cv-01623-JCM-VCF**, above the word “AMENDED” in the
17 space for “Case No.” Under local rule LR 15-1, any amended complaint filed must be
18 complete in itself without reference to prior filings. Thus, any allegations, parties, or requests
19 for relief from prior papers that are not carried forward in the amended complaint no longer
20 will be before the court.

21 IT FURTHER IS ORDERED that action on the pauper application (#1) is deferred at
22 this time.


23 IT FURTHER IS ORDERED that all other pending motions (## 09-11) are DENIED.

24 The clerk shall provide plaintiff with a copy of the original complaint that he submitted
25 together with two copies of a § 1983 complaint form and one copy of the instructions for
26 same.

27 If an amended complaint is filed in response to this order, the court will screen the
28 amended pleading before ordering any further action in this case.

1 If plaintiff does not timely mail an amended complaint to the clerk for filing, a final
2 judgment dismissing this action will be entered without further advance notice. If the
3 amended complaint does not correct the deficiencies identified in this order and otherwise
4 does not state a claim upon which relief may be granted, a final judgment dismissing this
5 action will be entered. In either event, the pauper application will be acted on in connection
6 with the judgment.

7 DATED: April 17, 2014.

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11 JAMES C. MAHAN
12 United States District Judge
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